

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated March 16, 2009 (hereinafter Office Action) have been considered. Claims 1-29 remain pending in the application.

Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

1. The Examiner has objected to the specification for informalities.

Applicants assert that the portion of paragraph 0035 that was objected to by the Examiner (e.g., “The abstract primitive factory 312 is an interface used to create the concrete primitives 310”) reads correctly. As stated in the next sentence of paragraph 0035, “It is up to the concrete factory 316 to actually create the concrete primitives 310.” Thus the abstract primitive factory is an interface that may accessed for purposes of creating concrete primitives, even though the actual creation of the primitives may be performed by the concrete factory. Withdrawal of the objection to paragraph 0035 is therefore respectfully solicited.

Regarding the objection to paragraphs 0037 and 0038, Applicants have amended these paragraphs in the present response. Applicants note that the reference in paragraph 0038 to “the abstract interface 404” is not in error. For example, paragraph 0035 states “abstract primitive factory 312 is an interface...” Nonetheless, to clarify the specification, this portion of paragraph 0038 has been amended to read “the abstract primitive factory interface 404.” No new matter has been introduced by the way of these amendments to the Specification. Withdrawal of the objections is respectfully solicited.

2. The Examiner has objected to the specification for failing to provide proper antecedent basis for the claimed subject matter.

According to the Office Action, the specification fails to provide antecedent basis for the term “computer-readable medium” recited in Claims 15-24. Applicants respectfully traverse the objections, but have amended Claims 15-24 to use the term “computer-usable medium.” These amendments are fully supported in the Specification as filed (e.g., ¶¶ 0054-0055) and no new matter has been added. Withdrawal of the objection is respectfully submitted.

3. Claims 3-5 and 10-12 are objected to under 37 C.F.R. § 1.75(c) as being of improper dependent form.

Applicants respectfully traverse the objections. According to the Office Action, the limitations recited in the dependent claims fail “to further limit any of the steps recited in the corresponding parent claims.” Applicants submit that there is no such requirement for dependent method claims, and Claims 3-5 and 10-12 are currently in proper dependent form.

As stated in M.P.E.P. § 608.01(n)(III):

A dependent claim does not lack compliance with 35 U.S.C. 112, fourth paragraph, simply because there is a question as to (1) the significance of the further limitation added by the dependent claim, or (2) whether the further limitation in fact changes the scope of the dependent claim from that of the claim from which it depends. The test for a proper dependent claim under the fourth paragraph of 35 U.S.C. 112 is whether the dependent claim includes every limitation of the claim from which it depends. The test is not one of whether the claims differ in scope.

This is also clearly reflected in the language of 37 C.F.R. § 1.75(c), which merely states “[c]laims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim.” Thus, while not acquiescing to the assertion that the dependent claims fail to further limit any of the steps recited in the corresponding parent claims, Claims 3-5 and 10-12 are in proper dependent form based on the standards required by 37 C.F.R. § 1.75(c) and 35 U.S.C. 112, fourth paragraph. Withdrawal of the rejection is therefore respectfully solicited.

4. Claim 29 is rejected based on 35 U.S.C. §112, second paragraph, as being indefinite.

Applicants respectfully traverse the rejection. According to the Office Action, “the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed functions such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed functions.”

Per 35 U.S.C. 112, sixth paragraph, a means-plus-function claim must be construed to cover the corresponding structure, material, or acts described in the specification. As noted by the Examiner, functions of “operating,” “processing,” and “translating” can be performed by a

combination of hardware and software, such as software modules 606-610 stored in memory 604 executed by processing unit 602. Applicants agree that this subject matter identified by the Examiner corresponds to at least one structure, material, or act associated with the functions set forth in Claim 29. Accordingly, withdrawal of the rejection is respectfully solicited.

5. Claims 15-24 are rejected based on 35 U.S.C. §101 as being directed to non-statutory subject matter.

Applicants respectfully traverse the rejection. However, in order to facilitate prosecution of the application and in a *bona fide* attempt to advance the application to allowance, the Applicants have amended Claims 15-24 to recite “a computer-usable medium.” These amendments are fully supported in the Specification as filed (e.g., ¶¶ 0054-0055) and no new matter has been added. As should be clear from the Specification, the term “computer-usable medium” is clearly distinguished from, e.g., transmitting mediums. Withdrawal of the objection is therefore respectfully submitted.

6. Claims 1-29 are rejected based on 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,444,386 to Jensen et al. (hereinafter “Jensen”) and further in view of purported Applicant Admitted Prior Art (hereinafter “AAPA”).

Applicants respectfully traverse the rejection. However, in order to facilitate prosecution of the application and in a *bona fide* attempt to advance the application to allowance, the Applicants have amended the claims to clarify particular aspects of the claimed invention. For example, Claim 1 has been amended to recite operating a communications module that facilitates operating system-level synchronization communications between the cellular modem software and the application engine software that are both running concurrently on an apparatus. A generic function is invoked from the communications module in response to a service request from the application engine software. The generic function comprises at least one of a request and response function directed to the cellular modem software. Independent Claim 15 has been similarly amended.

Independent Claim 8 has been amended to recite operating a communications module that facilitates operating system-level synchronization communications between the cellular

modem software and the application engine software that are both running concurrently on an apparatus. A specific function targeted for the application engine software is invoked from the cellular modem software in response to a hardware event. The specific function comprises at least one of a confirm function and an indication function. Claim 20 has been similarly amended.

Claims 25 and 29 have been amended to recite that an apparatus processes operating system-level synchronization communications between application engine software and cellular modem software. Generic functions of the communications module are processed to communicate with the application engine software. The generic functions comprise at least one of request and response functions directed to the cellular modem software, and confirm and indication functions directed to the application engine software. The amendments to Claims 1, 8, 15, 20, 25, and 29 are fully supported in the Specification as filed (e.g., ¶¶ 0025, 0031) and no new matter has been added.

Applicants submit that independent Claims 1, 8, 15, 20, 25, and 29 are not rendered obvious by Jensen as modified in view of Applicants disclosure. Jensen in view of Applicants disclosure at least fails to teach or suggest generic functions that comprise at least one of request and response functions directed to cellular modem software as set forth in Claims 1, 15, 25, and 29, and confirm and indication functions directed to the application engine software as set forth in Claims 25 and 29. Jensen in view of Applicants disclosure also fails to teach or suggest specific function that comprises at least one of a confirm function and an indication function targeted for application engine software as set forth in Claims 8 and 20.

Jensen is directed to a standard communication mechanism for provisioning applications and provisioning adapters using limited defined atomic units that can be utilized for a wide variety of applications and client devices. (Jensen, col. 2, lines 35-37). Jensen describes a provisioning server that “provides services and content to client devices” where a service is defined “downloadable content files that are installed on a client device 202a-202c in order to provide the user of the client device with a particular functionality” and “to customize the user experience of existing functionality present on the client device.” (Jensen, col. 5, lines 51-59).

Thus Jensen is directed to network communication between devices and is entirely unrelated to invoking generic or specific functions via communications module that facilitates operating system-level synchronization between cellular modem software and application engine software of an apparatus. Further, Jensen fails to address any of the generic or specific functions described in respective Claims 1, 8, 15, 20, 25, and 29. Jensen describes, e.g., discover, subscription, and delivery components of a provisioning API, but fails to teach or suggest any combination of request and response functions directed to the cellular modem software, or confirm and indication functions directed to application engine software.

Applicants also contest the applicability of the Background section of Applicants' own Specification as providing a motivation to apply Jensen's teachings to the communications between cellular modem software and application engine software, where both software runs concurrently on a communications device. Without acquiescing that this disclosure can be characterized as admitted prior art, Applicants submit that relying on the Applicants' Specification a motivation to combine these teachings is evidence that the rejections are based not on knowledge of one of ordinary skill in the art, but instead based on improper hindsight reasoning using knowledge gleaned only from Applicants' disclosure.

The rejections also rely on Jensen at col. 2, lines 19-31 as motivating one of ordinary skill in the art to apply Jensen's purported teaching of an abstraction layer to operating system-level synchronization between cellular modem software and application engine software, where both software runs concurrently on a single device/apparatus. However, given that Jensen's teachings are presented in the context of obtaining digital services on mobile client devices from provisioning servers (e.g., col. 1, lines 20-25), Applicants respectfully disagree that the teachings of Jensen reasonably pertinent to the claimed subject matter, and would not be relied upon by one of ordinary skill in the art in the context of operating system-level synchronization between modem and application software running on a single device or apparatus.

Dependent Claims 2-7, 9-14, 16-19, 21-24, and 26-28 are dependent from independent Claims 1, 8, 15, 20, and 25. While Applicants do not acquiesce with any particular rejections to these dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with independent Claims 1, 8, 15, 20, and 25. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional

features which further distinguish these claims from the cited references. “If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious.” M.P.E.P. §2143.03; citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

It is to be understood that the Applicants do not acquiesce to any characterizations in the Office Action made relating to the asserted art, the Applicants’ claims, nor to the application of the asserted art or combinations thereof to the Applicant’s claims. Moreover, the Applicants do not acquiesce to any explicit or implicit statements or conclusions by the Examiner concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, alternative equivalent arrangements, common knowledge at the time of the Applicants’ invention, officially noticed facts, and the like. The Applicants respectfully submit that a detailed discussion of each of the Office Action rejections beyond that provided above is not necessary, in view of the clear absence of teaching and suggestion of various features recited in the Applicant’s pending claims. The Applicants, however, reserve the right to address in detail any such characterizations, conclusions, and rejections in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (NOKM.086PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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